

Record of Decision *(40 CFR 1505.2 and 1506.1-3, 516 DM 5.4)*

9.1 When to Issue a Record of Decision

The ROD cannot be issued until at least 30 days after EPA has published the NOA for the FEIS. It can be released later, at the discretion of the lead agency (40 CFR 1506.10(b)(2)).

9.2 Content

A ROD should be prepared to accompany a decisionmaking package through the decision process. The ROD may be prepared as a separate document or integrated into any other appropriate decisionmaking package forwarded to the responsible official for action. The ROD will apply only to actions for which an environmental statement has been prepared. There is no required format for a ROD, but certain topics must be addressed. The ROD, whether it is a separate document or integrated with another decision document, will address:

- a. The decision and the alternatives considered, which should be the same ones covered in the EIS or PR/EIS, including the preferred plan. The decision should be within the range of alternatives addressed in the FEIS.
- b. The alternative(s) considered to be environmentally preferable.
- c. The factors that were considered with respect to the alternatives. Factors—including considerations of national policy—which were evaluated shall be indicated, and the ROD shall state how those considerations entered into its decision. Additional factors that may be weighed may include environmental impacts; social, economic, or technical considerations; Reclamation's statutory mission and authorities; water policy directives; and other such factors. If the information is included in existing decision documents, the final record will need to identify the alternative selected.

- d. Whether or not all practicable means to avoid or minimize environmental harm for the alternative selected have been adopted, and if not, why. A summary of environmental commitments and mitigation measures should be presented, where applicable.
- e. Any monitoring and enforcement program established to ensure that identified mitigation measures are accomplished. The ROD should also address actions Reclamation would take if monitoring shows that mitigation is inadequate or unsuccessful (also, see section 8.12, “Environmental Commitments”). This type of information shall be identified in the decision document. See figure 9.1 for an example of a ROD.
- f. Any significant comments received on the FEIS. Significant issues raised on the FEIS should generally be identified in the transmittal of the ROD.

Reclamation has not established any formal appeal process for RODs.

9.3 Environmental Commitments

In all cases of NEPA compliance, means to mitigate significant adverse environmental impacts should be presented and adopted, wherever possible. NEPA does not require mitigation measures to be adopted for all impacts; however, it does encourage mitigation of impacts to the fullest extent possible and wherever practicable. Any environmental mitigation or enhancement measures that Reclamation plans to implement are termed “environmental commitments.” These are not empty promises; Reclamation takes these environmental commitments very seriously. They must be presented clearly in the final NEPA document and ROD or FONSI (as applicable), funded appropriately, included in plans and specifications, and followed as an integral part of the action to ensure that they are implemented and operating as planned. Specifications writers and inspectors should be very aware of environmental commitments as they conduct their work to ensure the commitments are integrated with other project work.

9.3.1 List of Environmental Commitments

The Environmental Commitments Program should include: the preparation of Environmental Commitment Plans (ECP); if necessary, a program for managing the outcome of the decision; environmental commitment checklists (ECC); and postconstruction environmental commitment summaries.

A list of environmental commitments should be made an integral part of **all** NEPA compliance documents, where appropriate. If there are no environmental commitments, this fact should be noted. Figure 9.1 includes an example of a list of environmental commitments. The list of environmental commitments should consist of those identified in the compliance documents, memorandums of understanding, and/or correspondence with other agencies and public or private entities.

Types of environmental commitments include, but are not restricted to, the following examples. An actual list should specifically define the actions to be taken.

- Protection and enhancement of Federal- and State-listed threatened and endangered species
- Protection and enhancement of wetlands
- Protection and enhancement of rare and unique areas
- Maintenance of streamflow (especially low flows)
- Proper disposal of hazardous waste materials
- Construction and provision for the operation and maintenance of recreation areas
- Leaving selected areas of standing timber within the conservation pool elevation
- Providing multiple-level water outlet structures for downstream releases
- Spacing powerlines to prevent bird electrocution
- Watering disturbed areas for dust abatement

9.4 Addressing Comments on the FEIS

The ROD would generally contain a summary of the comments received on the FEIS. This summary should be brief and should only address the significant issues raised by the comments received. Only in special circumstances should any specific comments be responded to in the ROD. If the comments raise significant issues that have not been addressed, the need to supplement the FEIS should be determined. The ROD should also identify particular areas of controversy and any unresolved issues that exist.

9.5 Processing the ROD

A draft ROD will generally be prepared by the staff who were responsible for developing the EIS or PR/EIS. After approval by the program or area manager, the draft ROD will be submitted to the Regional Director (or Commissioner's Office of Policy or Policy and External Affairs Office, as appropriate) for policy and format review. Generally, following any necessary revision, the Regional Director will sign the ROD. The Commissioner, the ASWS, or the Secretary may sign some controversial or programmatic RODs. Upon signature, the signed original will be returned to the originating office for retention. A ROD cannot be executed until 30 days have elapsed after EPA publishes notification of FEIS filing in the *Federal Register*, except under the conditions of 40 CFR 1506.10.

On actions requiring a decision by the Secretary, the ROD will be prepared for the Commissioner's signature with an added line for the Secretary's concurrence. The ROD will be transmitted from the Commissioner, through the ASWS, to the Secretary for concurrence. RODs will be maintained as public documents and will be provided to the public upon request. There is no requirement to formally publish the ROD in the *Federal Register* or the media. However, the responsible official in the region must assure that the affected public is aware of the availability of the ROD. Appropriate means must be used to ensure widespread notification to involved agencies, organizations, and communities.

9.6 Rescinding a ROD

Sometimes a rescission of a ROD will have to take place. In order to rescind a ROD, Reclamation must develop a notice for the *Federal Register* that is similar to a notice of cancellation, but it will be a notice of rescission. The category of notice includes:

... any document published in the Federal Register that is not a Presidential document or does not relate to a rulemaking proceeding. Notice documents concern matters applicable to the public and are published for public information . . . (Federal Register Document Drafting Handbook, 1991 edition, page 7) (see Notice Document Requirements, page 53, of the same handbook for detailed information on how to start).

Development of notices must follow the format requirements of the *Federal Register*. To assure consistency with current format requirements, the notice should be sent via LAN to the Federal Register Liaison Officer currently located in Denver.

9.7 Implementing the Decision (40 CFR 1505.3)

Reclamation offices shall provide for monitoring to ensure that decisions are carried out in accordance with commitments made in the EIS. As prescribed by CEQ regulations, Reclamation shall implement mitigation and other conditions established in the EIS. As a lead agency, Reclamation is also required to:

- a. Include appropriate conditions in grants, permits, or other approval
- b. Condition funding of actions on mitigation
- c. Inform, upon request, cooperating or commenting agencies on progress in carrying out mitigation measures that were proposed and adopted by the agency making the decision
- d. Make available to the public, upon request, the results of relevant monitoring

9.7.1 Environmental Commitments Program

The environmental commitments program is a direct result of the commitments listed in the NEPA document and ROD. It is a recommended program for ensuring that all environmental project features (mitigation and enhancement) are included, developed, and operated concurrent with other project features. The environmental commitments program should include the preparation of ECP; if necessary, a program to adaptively manage the outcome of the decision ECC; and postconstruction environmental commitment summaries.

9.7.2 Environmental Commitment Plan

The ECP is a master, in-house, environmental management plan for projects requiring the preparation of NEPA documents. The ECP is based on the list of environmental commitments included in the NEPA document and other subsequent commitments such as those listed in the Clean Water Act 404 Permits, memorandums of agreement, and correspondence with other agencies, private entities, and so on. The ECP should be prepared prior to the initiation of the action. The responsible director or the designated representative(s) should approve the ECP and identify the means of determining successful completion of the commitments.

9.7.3 Environmental Commitment Checklist

The ECC should be a part of the ECP. It lists and summarizes the commitments from the ECP that are related to specific construction activities (whether they are performed in-house or by contractors) that are to be followed and/or monitored in the field. The project features identified in these commitments should be made a part of any construction contract or other appropriate action. Some examples of environmental commitments are listed in section 9.3.1.

9.7.4 Adaptive Management Program

If it is necessary to develop an adaptive management program, the ROD should outline the elements of the program, which should have been discussed in more detail in the text of the EIS (i.e., who was involved in the development of the program; which entities will conduct the monitoring; how new information will be analyzed and evaluated; and the timeframe for the program). The ROD should indicate that additional NEPA compliance may be necessary if new information requires reconsideration of the decision.

9.7.5 Postdecision Environmental Compliance Summary

After construction or implementation of the appropriate environmental commitments project features identified in the ECP and ECC, and within 1 year following the initiation of the action, a postdecision environmental compliance summary should be prepared. This summary is a postdecision followup document. It should contain information on the status of environmental commitments (e.g., when they were implemented, the effectiveness of the mitigating activity, any suggested improvements, and others). The summary may also include recommendations for the inclusion of additional environmental project features.

The area manager or responsible director should approve the postdecision environmental compliance summary. As appropriate, it is included in the project package which is provided to the operating office or agency for future followup actions. Periodic monitoring for compliance with the continuing activities listed in the postdecision environmental compliance summary should be incorporated into the ECP.

The regional office should receive copies of these summaries.

RECORD OF DECISION	
TONGUE RIVER BASIN PROJECT	
Final Environmental Impact Statement	
May 1996	
<u>Approved</u>	
_____	Date _____
Regional Director, U.S. Bureau of Reclamation	
_____	Date _____
President, Northern Cheyenne Tribe	
_____	Date _____
Director, Montana Department of Natural Resources and Conservation	

Figure 9.1—Example of a record of decision.

I. Introduction

This document constitutes the Record of Decision of the Department of the Interior, Bureau of Reclamation (Reclamation), Great Plains Region, regarding the preferred alternative for the Tongue River Basin Project (Project) in southeastern Montana. The Project is the subject of the Final Environmental Impact Statement, Tongue River Basin Project, Montana (FEIS 96-14, dated March 20, 1996), developed in compliance with the National Environmental Policy Act (NEPA), and the Montana Environmental Policy Act (MEPA).

II. Recommended Decision

The recommendation is to proceed with the environmentally preferred alternative as proposed by the State of Montana, the Northern Cheyenne Tribe, and Reclamation (Project Sponsors) collectively, and identified in the Final Environmental Impact Statement (FEIS).

III. Background

The FEIS identifies and analyzes probable impacts to the human environment that would result from the proposed Tongue River Basin Project. The Project includes the repair and enlargement of Tongue River Dam (Dam), the partial fulfillment of the water rights settlement ratified in the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (P.L. 102-374, 106 Stat. 1186) (Settlement Act), and the conservation, development, and enhancement of fish and wildlife resources and habitat in the Tongue River Basin. The FEIS was prepared jointly by the Montana Department of Natural Resources and Conservation (DNRC), the Northern Cheyenne Tribe (Tribe), and Reclamation. Reclamation was directed in the Settlement Act to assume the lead Federal agency responsibility for NEPA compliance for the Project.

The preferred alternative would alleviate dam safety concerns and protect downstream lives and property, fulfill and protect all existing water rights held in the Tongue River Reservoir (Reservoir), provide up to an additional 20,000 acre-feet of water to the Tribe, and provide for the conservation, development, and enhancement of fish and wildlife resources and habitat in the Tongue River Basin. All Project goals are components of the Settlement Act, which ratified the Northern Cheyenne-Montana Water Rights Compact (Compact) entered into on June 11, 1991 by the Tribe, the State of Montana, and the United States. The Compact is a settlement of the Tribe's rights to water in the Tongue River Basin and elsewhere. It requires, among other things, that the Tribe be provided with up to an additional 20,000 acre-feet of storage and exchange water from Tongue River Reservoir.

The Federal purpose of the Project is to protect the following Indian Trust Assets (legal interests in property and rights held in trust by the United States for the benefit of Indian Tribes or individuals):

- The Tribe's existing water supplies held in the Reservoir.
- Compact water for the Tribe from the Tongue River Basin.

Figure 9.1—Example of a record of decision (continued).

Reclamation has identified the protection of trust assets of the Tribe as the Federal action requiring NEPA compliance for the Project. A further purpose of the Project, as required by legislation, is to provide for the conservation, development, and enhancement of fish and wildlife resources and habitat in the Tongue River Basin. Project-related enhancement activities, although required by the Settlement Act, can be considered a separate Project goal and one that is not necessarily related to the actions addressed in this FEIS. Environmental compliance related to enhancement activities will be conducted on a site specific basis. A final purpose is the protection and safety of the human population living downstream.

Project Description and Other Alternatives Considered

The alternatives development process identified two reasonable alternatives, and a no action alternative, for consideration in the FEIS. The two action alternatives are:

- 1) Labyrinth Weir Spillway
- 2) Roller-Compacted Concrete (RCC) Spillway.

Both action alternatives would rehabilitate or replace the Dam spillway and raise its crest elevation 4 feet. The resultant increase in Reservoir capacity would provide additional water to the Tribe and, thus, partially fulfill the provisions of the Settlement Act. Alternative 2, the RCC Spillway, was identified as the environmentally preferred alternative.

V. Basis of Decision and Issues Evaluated

The Project Sponsors identified several significant issues that drove the alternative formulation (including proposed mitigations). The issues were in several resource areas, including recreation, aquatics/fisheries, hydrology, socioeconomic, and use of Compact water by the Tribe. A synopsis of the issues is presented below:

- Effects of Dam failure on human safety and property downstream of the Project.
- Absence of any negative effects on Indian trust assets/Federal trust asset responsibility.
- Effects on the water rights settlement with the Tribe.
- Effects on aquatic resources within the Reservoir and River upstream and downstream of the Reservoir.
- Project costs
- Impacts of flood events.
- Effects on Decker Coal Company mines adjacent to the Reservoir.
- Impacts to State and Federal governments from the cost of construction.
- Effects on recreation resources.
- Potential effects of Tribal water development scenarios.

Figure 9.1—Example of a record of decision (continued).

- Impacts to low income and minority populations.
- Impacts to Threatened and Endangered Species.

These issues are discussed in the FEIS. The resolution of these issues, and the environmental impacts to the related resources, formed the basis for the selection of the environmentally preferred alternative. The preferred alternative fulfills the purpose and need of the Project.

VI. Implementing the Decision and Environmental Commitments

Project planning, as described in the FEIS, included all practicable means of avoiding adverse environmental impacts. Where this was not possible, the Project Sponsors have committed to the following environmental mitigation programs, where appropriate and necessary, to ensure the protection of environmental resources and to establish the appropriate level of mitigation for impacts resulting from the Project. Mitigation activities will be coordinated and administered by the Interagency Mitigation and Enhancement Team (Team) consisting of representatives of the Project Sponsors, U.S. Fish and Wildlife Service (USFWS), the Montana Department of Fish, Wildlife and Parks (MDFWP), and the Bureau of Indian Affairs. Specific mitigation and monitoring proposals are described in detail in the FEIS.

Water conservation, as described in the FEIS, will be actively pursued as part of the proposed action. Additional environmental compliance would be completed for any implementation activities associated with water conservation.

AIR QUALITY

- 1) Airborne particulates from roads will be mitigated by using watering trucks and/or calcium chloride and/or magnesium chloride, and periodic grading.
- 2) Dust from concrete batching and aggregate excavation and hauling will be mitigated by watering.
- 3) Disturbed areas will be reclaimed to reduce particulates.
- 4) Wind blown particulates from construction will be mitigated by reducing the time disturbed areas are exposed to wind and sun.
- 5) Air quality monitoring will be used to evaluate effectiveness of dust control measures.

SOILS

- 1) About 3.5 miles of additional riprap are proposed along road and railway embankments to protect against soil erosion. Where applicable, vegetative cover and other means of shoreline stabilization will be considered.
- 2) Soil compaction in major construction areas will be alleviated by tillage.
- 3) Disturbed areas will be recontoured and revegetated.

Figure 9.1—Example of a record of decision (continued).

4) Topsoil will be stockpiled and disturbed areas reseeded and mulched where necessary.

5) Soil erosion potential after reclamation would be reduced by maintenance which may include: mulching, access control, soil replacement, seedbed preparation, and general reclamation techniques.

WILDLIFE

A wildlife management area will be established encompassing 600 to 1,000 acres of suitable Project lands, and/or lands to be acquired, for the mitigation of wildlife habitat lost due to the Project. The wildlife management area could be established by acquisition of land through fee title or easement. Areas currently being investigated for wildlife management purposes are located throughout the entire

Tongue River Basin. The wildlife management area will mitigate for losses of up to 250 acres of riparian vegetation, and approximately 328 acres of grassland and scrub forest. Efforts to establish the wildlife management area are currently focused at the upper (southern) end of Tongue River Reservoir.

AQUATICS AND FISHERIES - The following monitoring and restocking programs have been coordinated with MDFWP and USFWS.

1) A supplemental walleye stocking program will be initiated for Tongue River Reservoir following refilling after construction is complete, using 10,000 8-inch yearling fish annually, for a 2 year period.

2) MDFWP will monitor the spottail shiner population in Tongue River Reservoir during the months of August prior to construction activities, during construction, and after completion of construction. If it is determined by MDFWP, and the Mitigation and Enhancement Team, that adverse impacts have occurred to the spottail shiner population, a stocking program will be initiated to mitigate these impacts.

3) MDFWP will monitor the smallmouth bass population in the reach of Tongue River between the Dam and Ashland, Montana, visually during construction activities, and by sampling in 1999, after construction (visual monitoring focuses on observing flow and habitat availability). Pre-Project data were collected in 1993. If it is determined by MDFWP and the Mitigation and Enhancement Team that adverse impacts have occurred to the smallmouth bass population in this reach of the River, a stocking program will be initiated to mitigate these impacts.

4) MDFWP will monitor smallmouth and channel catfish populations in the reach of Tongue River between Ashland and the T&Y Diversion Dam visually during Project construction, and by sampling in 1999, after construction. Pre-Project data were collected in 1993. If it is determined by MDFWP, and the Mitigation and Enhancement Team, that adverse impacts have occurred to the smallmouth bass and channel catfish populations in this reach of the River, a stocking program will be initiated to mitigate these impacts. This stocking program will consist of a one-time introduction of 155,000 2-inch fingerling smallmouth bass and 77,500 2-inch fingerling channel catfish after Project construction and restoration of normal streamflows.

Figure 9.1—Example of a record of decision (continued).

- 5) The present MDFWP program to stock rainbow trout in the Tongue River immediately downstream of the Reservoir will continue.
- 6) Provision will be made in an agreement, or other suitable instrument, between the Project Sponsors and MDFWP for mitigating the impacts of fishery resources of any unanticipated events, such as a drastic winter-kill during Reservoir drawdown or an emergency or other short term shutdown of water releases at the Dam during Project rehabilitation. Restocking, water pumping (to provide fish survival flows in the River), or other costs will be included among Project costs for fishery mitigation.
- 7) To minimize impacts to downstream aquatics, MDFWP will monitor the condition of the River downstream of the Dam during construction of the Project. A release of run-of-river flows, or up to 190 cfs, would be targeted during the construction period with the exception of low flows during installation of the low level outlet works. The minimum release during installation of the low level outlet works will be run-of-river flows or, if Reservoir capacity exceeds the targeted construction-related minimum pool, 75 cfs. If excess inflow allows, releases beyond maintenance level would be made in mid-May to September to facilitate spawning runs of warm-water species and provide improved aquatic habitat. Current monitoring of Tongue River flows at Miles City will continue following construction.

ADDITIONAL HABITAT MITIGATION

- 1) Reservoir levels will be maintained at the highest possible elevation at all times during the construction period. These levels will be governed by safe operating limits for the Reservoir, as well as water necessary for water contract holders.
- 2) To maintain instream flows during critical periods during construction, funds will be made available in the Project budget to lease water from willing agricultural water users, provided a monitoring and enforcement program to control lower priority diversions is in place and a need is demonstrated.
- 3) To expedite regeneration of habitat lost due to inundation, the Project Sponsors will conduct a planting program above the new high water mark in suitable areas to mimic or enhance existing riparian conditions.
- 4) Regeneration of cottonwood and willow stands from existing seed sources will be enhanced by site preparation. Timing of preparation with the relatively short duration of seed viability is an important consideration.
- 5) Selected riparian zones will be improved by fencing cattle out of critical areas along the Reservoir, restricting campers to designated areas, instituting programs to control the spread of salt-cedar on Project lands, and controlling the spread of noxious weeds.
- 6) Clearing woody vegetation in the new pool area will be limited to areas critical for safety or Dam operations. Existing willows will be left wherever possible to speed the reestablishment of forage fish and juvenile predators after the construction drawdown. Large cottonwoods killed by the new pool will be left wherever possible to provide nesting and perching habitat.

Figure 9.1—Example of a record of decision (continued).

7) Reclamation of disturbed areas will be conducted according to a weed control plan developed by the Project Sponsors in consultation with county weed districts and in compliance with Montana's County Weed Control Act.

WETLANDS

Approximately 314 acres of wetlands will be impacted by the Project. It has been estimated, that at the higher water levels resulting from the Project, approximately 383 acres of wetlands around the Reservoir will naturally regenerate. To account for the functions and values of the original wetlands, and to allow for the lag-time involved with regeneration, the Project Sponsors have committed to the development of a minimum of 50 acres of wetlands. These wetlands will be developed in accordance with the Wetland Mitigation Plan.

THREATENED, ENDANGERED, AND CANDIDATE SPECIES

The Project Sponsors have determined that no adverse impacts will occur to Threatened, Endangered, or Candidate species as a result of the proposed action if the following commitments are implemented. These commitments have been agreed to, and coordinated with, the Project Sponsors, USFWS, and MDFWP. If any Threatened or Endangered species, both those previously identified and those not previously identified, is encountered during construction, activities in the immediate area will cease and additional consultation will take place with Reclamation and USFWS.

Bald Eagle

At a minimum, second option planning as delineated in the "Montana Bald Eagle Management Plan, July 1994" (Management Plan) will be applied for the nest site 2.5 miles downstream of the Dam and any others identified in the Project area. This approach defines 3 concentric nest-site management zones around the nest. For each zone there is a set of guidelines for managing activities in that zone with restrictions generally decreasing as distance from the nest increases. Under this planning scenario the outer-most zone extends 2.5 miles from the nest.

If as a result of final design considerations, construction activities are proposed which would abrogate guidelines set forth in the Management Plan, third or fourth option planning would be conducted to determine if the proposed activities would be allowable. These planning options involve a researched, site-specific approach to define which specific areas are being used by the eagles.

The following measures will be applied to augment or supplement the guidelines contained in the Management Plan:

- (1) Prohibit usage of the county road adjacent to the nest site for Project-related traffic during the February 1 to August 15 period for each year of construction. Project-related traffic includes, but is not limited to, trucks and heavy equipment. Commuting workers would be encouraged to avoid the area.
- (2) Monitor the Project area, with emphasis on the upper River, for nesting bald eagles or adult eagles exhibiting nesting behavior each spring and continuing through the completion of Dam rehabilitation activities.

Figure 9.1—Example of a record of decision (continued).

(3) Monitor upper Project area (Reservoir and approximately 5 miles downstream) for bald eagle presence and use during fall, winter and spring of each construction season. Ice conditions in the River below the Dam should be monitored during low flow periods to ensure that sufficient open water exists to attract waterfowl. If open water does not exist, flows would be increased, or other measures taken, to provide sufficient open water to eliminate impacts to the bald eagle.

(4) Post and enforce vehicle speed limits in the Reservoir area including the downstream construction area to lessen the risk of vehicle collisions with big game. The combination of less carrion and lower speeds will reduce the risk of bald eagle/vehicle collisions.

(5) Take precautions to minimize the potential for an accidental spill or discharge of any chemical or petroleum product. Additionally spill control plans/measures will be in place prior to the beginning of construction.

(6) Any new powerlines will be "raptor-proofed" in accordance with USFWS practices to minimize mortality from collisions or electrocution.

Peregrine Falcon

(1) Items 4, 5, and 6 described under bald eagle are applicable to the peregrine falcon.

(2) The Project area will be surveyed for peregrine falcons during the spring, summer and fall prior to the beginning of construction activities. If peregrines are documented in the Project area, a determination will be made at that time regarding potential impacts of specific construction activities and the need for additional coordination measures.

Piping Plover and Least Tern

The surveys conducted in 1991 in conjunction with preparation of the Coordination Act Report are considered coordination measures to reduce potential adverse impacts to piping plovers and least terns. The Reservoir area will be surveyed in the spring and summer, and during the construction drawdown to determine if either of these species has begun to use the area. If nesting birds are located during these subsequent surveys, consultation with USFWS will be re-initiated immediately.

Pallid Sturgeon

The surveys conducted in 1991 in conjunction with preparation of the Coordination Act Report for this Project are considered to be coordination measures to eliminate potential impacts to the pallid sturgeon. If other evidence of the existence of this species in the Project area exists, such as an incidental catch by a fisherman or collection by MDFWP during electroshocking or netting, consultation with USFWS will be re-initiated immediately.

Black-footed Ferret

(1) A ferret survey will be conducted prior to implementing any measures that will negatively affect prairie dog towns exceeding an 80-acre threshold delineated in the USFWS's "Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act" (1989).

Figure 9.1—Example of a record of decision (continued).

(2) If ferrets are discovered, consultation with USFWS will be re-initiated immediately .

Candidate Species

(1) Items 5 and 6 described under the bald eagle also apply to Candidate species.

(2) Information will be collected on candidate species in the Project area in conjunction with the implementation of the mitigation and enhancement measures and other Project activities to aid in the understanding of the ecology of these species and determine how future Project operations may affect these species.

RECREATION

Mitigation for impacts to recreation from the Project are divided into: general measures, measures for Campers Point, and measures for the fishing access site below the Dam.

General

- 1) About 3,000 feet of new or relocated internal park roads will be built to accommodate the new water level and park facilities. About 5,600 feet of existing internal roads will be reclaimed.
- 2) The existing 100-foot by 50-foot man-made sand beach at Sand Point will be replaced or relocated above the new water line.
- 3) A new 200-foot by 24-foot boat ramp will be built at Campers Point to replace the existing ramp that will be inundated.
- 4) A new 80,000-square-foot parking area at the ramp will be developed to accommodate boat launching and removal.
- 5) A concession building at Campers Point will be located above the new water line.
- 6) A new well and septic system will be developed to replace the existing facility at Campers Point.
- 7) Eighteen single latrines (handicap accessible) will replace 11 existing single and three double latrines.
- 8) Eleven new picnic shelters will replace nine existing shelters.
- 9) About 7,600 linear feet of shoreline at recreation sites will be revegetated at full pool.
- 10) Thirty fire rings will be replaced or relocated to areas suitable for camping and/or day use.
- 11) Where possible, and consistent with aggregate mining activities, earth work is proposed with available overburden to increase acres of optimal camping/day-use areas at Campers and Pee Wee Points.

Recreation mitigations will be implemented during the construction and reclamation phase of the

Figure 9.1—Example of a record of decision (continued).

6) Speed restrictions of 15 MPH for trucks hauling materials through the residential area of Sheridan, Wyoming, will be considered in consultation with area residents and city officials in the event that a rail load-out facility were used in Sheridan.

7) Dust control along County Road No. 380. in the construction staging area, and in Sheridan, Wyoming, (in the event that the Sheridan rail load out were used) will be conducted when necessary by sprinkling with water or application of a dust palliative such as calcium chloride and/or magnesium chloride.

8) If necessary, hauling major construction materials may be restricted to 7:00 a.m. to 9:00 p.m. to avoid nighttime disturbance of residents in Sheridan, Wyoming, and campground users at the Reservoir.

CULTURAL RESOURCES

Mitigation for cultural resources will be in accordance with a Memorandum of Agreement among Reclamation, the State Historic Preservation Office (SHPO), the Tribe, and DNRC. Mitigation plans will be decided in consultation with the Advisory Council on Historic Preservation, the Tribe, SHPO, DNRC, and other appropriate parties.

WATER QUALITY

The Project Sponsors commit to abiding by all appropriate water quality laws, regulations, and permits. This would include development of a construction-related erosion control plan to minimize sediment loading in the Reservoir and River, and a spill prevention plan to ensure contaminants will not enter the drainage.

AGRICULTURAL MITIGATION

Negotiation of the appropriate agricultural mitigation will take place as presented in the "Tongue River Basin Project Downstream Agricultural Mitigation Plan". This Plan is available on file at DNRC.

COAL MINE FACILITIES MITIGATION

Coal mine mitigation will be conducted in accordance with the "Tongue River Dam Rehabilitation Project Decker Coal Company Mine Mitigation Study". The purpose of the study was to assess the impacts of the proposed Project on Decker Coal Company facilities and operations, and provide methods and costs for mitigating potential impacts. The results of the study are available on file at DNRC.

There are no unresolved issues relevant to this Record of Decision.

VII. Comments on the Final Environmental Impact Statement

One formal comment letter was received on the FEIS. This was from the U.S. Environmental Protection Agency (See the attached letter dated April 24, 1996). The following responses reference the numbered comments in EPA's detailed comments:

Figure 9.1—Example of a record of decision (continued).

1) The Project Sponsors share your concern over the health of the aquatic habitat in the Tongue River, and will promote and encourage the establishment of an instream flow requirement for the Tongue River. That concern has been of great importance throughout all phases of Project planning. The Tribe identifying instream flow releases as part of a present and reasonably foreseeable future use of their water is an example of that concern.

The FEIS acknowledges the habitat and water quality concerns that your letter presents in regards to the full development of Yellowstone River Compact water by the State of Wyoming. The Project Sponsors believe that the impacts to the aquatic habitat in the Tongue River due to Tribal water use alone have been adequately addressed in the FEIS. Future water use by Wyoming will cause further, and more substantial, impacts to the River. Mitigation for those impacts would have to be addressed at that time. The Sponsors also believe that the increased depth of the Reservoir will not only increase the Reservoir aquatic habitat, but will also add more flexibility in providing downstream flows.

The Record of Decision does not commit the State (MDFWP) and the Tribe to a lease agreement to assure releases for instream flows. Such an agreement would have to be made between those two entities.

2) A decision to change the Reservoir minimum pool elevation would have to be made by five member advisory committee as referenced in your comment. This committee will be established to develop the final Reservoir operations plan. A commitment to change the minimum pool cannot be accomplished until this is taken up by the committee. The Project Sponsors will actively promote and encourage the establishment of a minimum pool for Tongue River Reservoir.

3) The Sponsors agree that buying water rights from the sellers that indicated a willingness to do so, would be a good way to help maintain the River's aquatic habitat. The purchased water could be stored for release during critical low-flow periods. This concept will be pursued as part of an over-all water conservation plan.

4) The Project Sponsors agree that it would be advantageous to have a member of the advisory committee with expertise in aquatic resources. It was anticipated that the MDFWP or USFWS member would fulfill that role. If not, the Sponsors would encourage the election of a fifth member with those qualifications.

5) The Project, as it is presently configured, does not include a multi-level outlet works. In order to alter the temperature of the Reservoir outlet water, the depth of the Reservoir would also have to be altered to take advantage of the temperature strata at different water levels. The increased depth of the Reservoir will aid this effort by adding operational flexibility. Such operational flexibility will be pursued, and should be incorporated into any future Reservoir operational plans developed by the advisory committee.

6) The Project Sponsors also are encouraged by the estimated regeneration of wetland habitat at the Reservoir. This regeneration should help the sponsors fulfill their commitment to have no net loss of wetlands due to the Project. The quote you make refers to riparian vegetation. The FEIS commits for up to 250 acres of riparian vegetation as part of the wildlife management area to mitigate for the losses described in the quotation.

7) The Sponsors are committed to developing the enhancement portion of the Act concurrently with the dam construction.

Figure 9.1—Example of a record of decision (continued).

